BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JAMES WALDEN Claimant VS. **RENO COUNTY** Respondent AND **KANSAS WORKERS RISK COOP** Insurance Carrier AND **KANSAS WORKERS COMPENSATION FUND**	)	Docket No. 196,171

ORDER

Respondent appeals a Preliminary Order entered July 13, 1995.

ISSUES

Respondent contends the Administrative Law Judge exceeded her jurisdiction in ordering preliminary benefits because the evidence does not establish that claimant suffered accidental injury arising out of and in the course of his employment for respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that this appeal was not, as to the issue raised, timely filed and accordingly, should be dismissed.

The appeal is from the second preliminary order entered in this case. The first order followed a preliminary hearing held on May 2, 1995. At the May preliminary hearing respondent argued that claimant's bilateral knee injuries did not arise out of and in the course of his employment and also argued and presented evidence relating to whether claimant had a knee condition requiring medical treatment. Following that preliminary hearing the Administrative Law Judge entered her written Order, dated May 22, 1995, stating:

> "Authorized physician, Dr. Jay Stanley Jones, to perform diagnostic tests as needed on Claimant's knees. Dr. Jones to offer treatment recommendations, but no additional treatment until further order of the Court."

Neither party appealed the Order of May 22, 1995. After an evaluation, Dr. Jones recommended arthroscopic surgery on both knees. A second hearing was then held on July 13, 1995. No transcript was made of that hearing, but we are advised by respondent's counsel that the Administrative Law Judge indicated, at that time, that her previous ruling included a finding that the injury arose out of and in the course of employment. Claimant's counsel advises that respondent had indicated no transcript was necessary.

Respondent now argues that the ruling of May 22, 1995 did not constitute a finding that claimant's injury arising out of and in the course of his employment; that the Administrative Law Judge only referred claimant for consultation and evaluation by a physician. Respondent also asserts that at the second hearing, respondent's counsel argued that the injury did not arise out of and in the course of claimant's employment.

The Appeals Board finds that respondent's appeal fails for several reasons. First, the Appeals Board understands the original Order of May 22, 1995 to have, in fact, included a finding that the injury arose out of and in the course of claimant's employment. The limitations on the referral for medical evaluation were likely intended to allow determination of the nature and extent of claimant's injuries before deciding what, if any, treatment should be ordered. It did not appear the Administrative Law Judge intended to obtain an opinion regarding the relationship between claimant's work and his injuries. The July Order, like the May Order, does not state that the Administrative Law Judge finds claimant's injury arose out of and in the course of his employment. Respondent assumes by this appeal that the July Order infers a finding of compensability. The Appeals Board believes and finds that the May Order also included an implied finding that the injury arose out of and in the course of claimant's employment.

The record presented on appeal indicates no new evidence relating to whether injury arose out of or in the course of claimant's employment was presented at the July preliminary hearing. Accordingly, the appeal does not constitute a timely appeal from the finding that the injury arose out of and in the course of claimant's employment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that respondent's appeal on whether claimant's injury arose out of and in the course of his employment was not timely filed and respondent's appeal should be, therefore, and hereby is, dismissed.

IT IS SO ORDERED.

Dated this ____ day of October, 1995.

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BOARD MEMBER

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BOARD MEMBER

BOARD MEMBER

c: Brian D. Pistotnik, Wichita, Kansas
Rose Linneman, Wichita, Kansas
Randall Henry, Hutchinson, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director